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SUPREME COURT, U.S.
FILED
MAR 9 - 2006
OFFICE OF THE CLERK

No. 05-130

IN THE

Supreme Court of the United States

EBAY INC. AND HALF.COM., INC.,

Petitioners,

v.

MERCEXCHANGE, L.L.C.,

Respondent.

ON WRIT OF CERTIORARI TO
THE UNITED STATES COURT OF APPEALS
FOR THE FEDERAL CIRCUIT

BRIEF OF THE UNITED INVENTORS ASSOCIATION AND TECHNOLOGY LICENSING CORPORATION AS *AMICI CURIAE* IN SUPPORT OF MERCEXCHANGE, L.L.C., ON THE MERITS

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INTERESTS OF AMICI CURIAE

The United Inventors Association ("UIA") is a non-profit organization devoted to building and strengthening the infrastructure of the independent inventor community. UIA members include local inventor organizations as well as individual inventors. In 1995, the UIA published the first edition of its Inventor's Resource Guide, a collection of articles and resource information designed to help those seeking guidance for the difficult process of developing and marketing their new product ideas. The Guide is distributed to each of the 83 Patent and Trademark Depository Libraries in the country and has also been available through the Small Business Development Center network. The UIA coordinates and works on the larger problems facing independent inventors that neither individuals nor groups alone would have the time or resources to pursue, including intellectual property and patent reform issues.[1]

Technology Licensing Corporation ("TLC") is a patent licensing business founded by J. Carl Cooper, a television engineer with over fifty U.S. patents to his name. In 1983, Mr. Cooper founded Pixel Instruments Corporation. Pixel manufactured audio and video signal processing equipment sold to television stations and networks worldwide. Mr. Cooper also licensed some of his patents, including, most significantly, a patent licensed to Sony Corporation directed to a video noise reduction circuit used in the Betamax video recorder. The patented circuitry performed so well for Sony

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[1] Pursuant to Supreme Court Rule 37.6, *Amici* state that no party or its counsel authored any part of this brief. No person or entity, other than *Amici* and its counsel, Bromberg & Sunstein LLP, contributed money for the preparation or submission of this brief. The parties have consented to the filing of this *amicus* brief. The consent letters have been lodged with the Court.

that it was copied by many other manufacturers. In addition, several other of Mr. Cooper's inventions were also being copied. Because the foreign competition had lower labor and overhead, it became difficult for Pixel to compete against the infringers and, consequently, turned to licensing and enforcement of Mr. Cooper's patents through the TLC entity.

TLC's and Mr. Cooper's licensing activities have brought about $100 million into the U.S. economy, mostly from foreign companies. This licensing income earned by the non-practicing entity, TLC, is essential to supporting Mr. Cooper, his engineering consultants, and Pixel Instruments. The licensed inventions benefit the public with cheaper and higher performance television products.

The *Amici* believe that the ability to obtain injunctions, whether or not the patent owner is practicing the invention, is important to the licensing efforts of independent inventors. Such licensing is essential to continued research and development efforts by inventors across the country and the world.

SUMMARY OF THE ARGUMENT

The district court's rejection of an injunction simply because MercExchange did not itself compete with eBay was the equivalent of requiring the inventor, Woolston, to build, finance, and manage a business to compete with a powerful company, such as eBay, before allowing him the right to stop continuing infringement. That ruling, which improperly considered whether the patent owner was using the invention, runs not only against this Court's precedent but also against sound policy.

Independent inventors, like those represented by the UIA and like Mr. Cooper, contribute disproportionately to technological innovation and to the American economy. But independent inventors face the unenviable challenge of

getting large companies to honor their intellectual property rights. Given the significant imbalance of financial resources between independent inventors and large companies, and given the substantial cost of patent litigation, it is unfair and bad policy to deprive inventors of the right to a permanent injunction. The predictable threat of an injunction against infringement is important to bring companies to the negotiating table and to heed patents generally.

Licensing permits and encourages continued research and development among the thousands of independent inventors across the country. Licensing income comes to this country from all around the world. Courts should not deprive intellectual property owners of their primary leverage in securing license agreements — *i.e.*, the leverage of an injunction against continued infringement.

Nothing in the patent statutes permits consideration of the inventor's use or non-use of the invention. Indeed, use is not a condition for granting a patent. Thus, it seems strange that a district court would consider use to be a factor when that factor runs contrary to U.S. law.

The proposed alternative to an injunction — compulsory licensing — does not fully compensate the patent owner and is not authorized under U.S. law. Indeed, Congress had repeatedly rejected calls to insert a compulsory licensing scheme in the patent laws. The one remedy that fully compensates the patent owner is an injunction.

An injunction is not such a drastic remedy as the petitioners argue. An injunction only requires an adjudged infringer to honor the duly-issued patent and does not stop the introduction of new technology beyond the reach of the infringed patent. Accordingly, this Court should reaffirm its precedents rejecting compulsory licensing and excluding non-use as a factor in granting patent injunctions.

ARGUMENT

I. INDEPENDENT INVENTORS CONTRIBUTE SUBSTANTIALLY TO THE AMERICAN ECONOMY

Circuit Judge Pauline Newman of the Court of Appeals for the Federal Circuit has presided over patent cases since 1984 and had a long history before that as a patent attorney. Judge Newman has seen first-hand the positive impact of patents on the American economy.

> Technologic innovation has driven the American economy, over the past century, to the exclusion of virtually all other growth factors. Many students of technologic change have explained that innovative activity is fundamental to industrial vigor, developing new markets while enhancing productivity and competitiveness, thereby strengthening and enriching the nation. *E.g.*, F.M. Scherer, *Innovation and Growth* (1984); Robert Solow, *Technical Change and the Aggregate Production Function*, 39 Rev. Econ. & Stat. 312 (1957). The role of patents in this activity is of increasing scholarly interest. *E.g.*, David Silverstein, *Patents, Science and Innovation: Historical Linkages and Implications for Global Technological Competitiveness*, 17 Rutgers Computer & Tech. L.J. 261 (1991); Zvi Griliches, *Patents: Recent Trends and Puzzles, in Brookings Papers on Economic Activity: Microeconomics* 291 (Martin N. Baily & Clifford Winston eds., 1989).

Hilton Davis Chem. Co. v. Warner-Jenkinson Co., Inc., 62 F.3d 1512, 1529 (Fed. Cir. 1995) (Newman dissenting), *rev'd*, 520 U.S. 17 (1997).

Independent inventors form a large part of America's technologic growth and account for at least 18% of patent filers in the United States Patent and Trademark Office ("USPTO"). *See* Press Release, USPTO, Commerce Under Secretary James E. Rogan to Address Independent Inventors in Philadelphia (Nov. 14, 2003). "[M]any independent inventors are professional engineers and scientists with working knowledge of invention and the patent system." Kristina Dahlin et al., *Today's Edisons or Weekend Hobbyists: Technical Merit and Success of Inventions by Independent Inventors*, 33 Research Policy 1167, 1179 (2004).

Independent inventors have a greater tendency toward radical innovation and thus have an increased likelihood of creating inventions of greater technical importance than firm-based inventors who may tend towards more incremental innovation.

> This is supported by the rationale that industry outsiders have a greater incentive than corporate inventors to challenge dominant designs in novel ways, since they have no older product generation to protect and are less vested in the assumptions and problem-solving methods of the industry. In addition, the typical work experience of the independent inventor — who often has a background in an industry different than the industry being invented in — also lends weight to the novelty, and hence, technical importance, of his or her inventions.

Id. at 1170 (internal citations omitted).

Although independent inventors disproportionately contribute ground-breaking technologies, they often lack the backing of large companies to help them enforce their patent rights. Certainly, independent inventors merit protection in the courts and should not be discounted simply because they

do not manufacture or provide products and services that compete with the infringers.

II. INDEPENDENT INVENTORS DEPEND ON THE THREAT OF INJUNCTION TO GAIN FAIR LICENSES FOR THEIR INNOVATIVE TECHNOLOGY

"Build a better mouse trap and the world will beat a path to your door." Or so the saying goes. The problem with this saying is that the world of commerce demands more than just a better mousetrap for an invention to come to market. Rather, commerce demands capital, investment, marketing savvy, and business acumen. The world is full of inventors who have, literally, built the bette. mousetrap and have been awarded patents for their inventions. But they have not necessarily been successful in seeing their inventions to market. Accordingly, many inventors find it more prudent to license their inventions to established companies that have the experience to commercialize the patented invention. Often times, however, inventors are forced to litigate against the would-be licensees, who have the economic clout and resources to drain inventors and tie them up in costly litigation. *See* Timothy Aeppel, *Inventors Who Build a Better Mousetrap Get Mostly a Beating*, Wall St. J., Mar. 2, 2006, at A1.

Inventors of valid, commercially important patents who choose to license rather than to make and sell the inventions themselves are sometimes labeled "trolls" and worse. That label unfairly confuses the issue and is based on misperceptions. According to Jon W. Dudas, Director of the United States Patent and Trademark Office, the problem of so-called "patent trolls" is overstated. Rather, as Mr. Dudas reports, "[t]he fact is that [inventors choose to license rather than make the patented products] is not a problem. Licensing is good for our economy." Neil E. Graham,

Perception Gap Hindering Efforts to Improve Patent System, Dudas Says, 71 Pat. Trademark, Copyright J. 374, 375 (2006) (reporting on remarks by Jon W. Dudas at the American Intellectual Property Law Association's 2006 Mid-Winter Institute) (emphasis added). Licensing is often an inventor's best avenue for financially supporting his or her research and development.

Persuading infringers to license a patent is an extremely difficult battle for independent inventors even when fortified with the threat of an injunction. The unwillingness of large corporations to accept licenses from independent inventors is legend. For instance, Philo T. Farnsworth, inventor of electronic television, was forced into years of costly litigation by RCA. David Sarnoff, president of RCA at the time, reportedly said, "RCA doesn't pay patent royalties, we collect them." Gerald Parshall & Richard A. Folkers, *Philo T. Farnsworth: "Dr. X's" Instant Images*, U.S. News & World Report, Aug. 17, 1998. Such behavior persists today. One of UIA's members reports, "When I approached a large company with my invention to offer it for licensing, their exact words were: 'if we decide to manufacture this, just sue us . . . .'" The large company figured that litigation was too expensive for the independent inventor, so it never took his offer to license the technology seriously.[2]

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[2] To the extent technology is being used without paying for it, goods and services are sold cheaply. This occurs in lawless foreign countries where piracy is rampant and products are sold at extreme bargains. Given that the U.S. economy is dependent on intellectual property, it must demand full respect for intellectual property rights. Failure to enjoin infringement will likely hurt U.S. efforts overseas to get other nations to enforce intellectual property rights on behalf of inventors, both independent and company-based.

In this case, eBay seeks to add significantly to the onerous burden already placed upon the individual inventor. Big businesses have long placed enormous hurdles in the independent inventors' way. A large company can afford to risk not paying royalties and to challenge a patent in court. Moreover, today's litigation practice offers the large company a variety of ways of increasing the costs and burdens on patentees that have the potential to dissuade them from continuing the fight. Huge costs are associated with discovery, motion practice, appeal, and reexamination. If numerous factors are to be weighed before granting an injunction, large businesses will have yet another way to add even more costs. eBay's request to deny an injunction further seeks to impose on patentees the need to bring a second infringement suit to pursue a mere colorable change to an established infringing product or system.

Independent inventors add to scientific knowledge and the useful arts. Having earned a patent, the inventor has, by definition, supplied the public with an enabling disclosure of a new and non-obvious invention. 35 U.S.C. §§ 112, 102, 103. If big business can trample on the inventor's rights with no more penalty than the royalty it refused to pay in the first place, inventors will see enforcement of their patents as a futile effort, and their innovation and contributions to society will be discouraged. Given the enormous imbalance of resources between big business and individuals, the predictable right to an injunction is essential to make licensing a possibility. The outgunned inventor has little or no leverage other than the threat of an injunction to bring a large infringing company to the table to negotiate a fair license.

III. EXCLUSIVE RIGHTS ARE NOT CONTINGENT ON ABILITY TO PRACTICE ONE'S OWN INVENTION

Perhaps in recognition of the increasing importance of independent inventors and patent licensing to the U.S. economy, and perhaps to diffuse the rancor in some circles over so-called patent trolls, this Court has agreed to hear the *MercExchange* case and has particularly asked whether it should reconsider its long-established precedent in *Cont'l Paper Bag Co. v. E. Paper Bag Co.*, 210 U.S. 405 (1908). That precedent holds that the patent owner's non-use is irrelevant to whether he or she deserves an injunction. This rule flows from "the very essence of the right conferred by the patent, as it is the privilege of any owner of property to use or not use it, without question of motive." *Id.* at 429. This precedent should be maintained, as further argued below.

Upon applying for a patent, an inventor does not sign an affidavit promising to use, make, or sell the invention should a patent issue. Indeed, the law does not require use or commercialization of the invention as a condition for granting a patent. The requirement is that the invention be new and useful:

> Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvements thereof, may obtain a patent therefore, subject to the conditions and requirements of this title.

35 U.S.C. § 101 (1952).

The conditions for patentability are set forth primarily in 35 U.S.C. §§ 102 and 103. These conditions mostly concern whether the invention is novel and non-obvious. Nothing in these provisions, or anywhere else in the United States patent

laws, requires that the inventor himself make, use, or sell the patented invention.

By statute, the patent grants to the inventor and his or her heirs and assigns "the right to exclude others from making, using, offering for sale, or selling the inventions throughout the United States . . ." 35 U.S.C. § 154(a) (emphasis added). Again, nothing in this statutory patent grant is conditioned on the patent owner making and selling commercial embodiments of the invention or competing with the infringer. Indeed, as this Court has noted, Congress has repeatedly considered and rejected requests to amend the patent laws to require forfeiture of the right to exclude upon nonuse of the invention. *Special Equip. Co. v. Coe*, 324 U.S. 370, 379 (1945) ("Congress has frequently been asked to change the policy of the statute as interpreted by this Court by imposing a forfeiture or providing for compulsory licensing if the patent is not used with a specified time, but had not done so."); *accord*, *Hartford-Empire Co. v. United States*, 323 U.S. 386, 432–33 (1945).

Thus, it is strange that the district court in the underlying case took into consideration that MercExchange did not itself make or sell the patented invention in competition with eBay. Such consideration has no basis in the patent laws. To be sure, 35 U.S.C. § 283 allows courts to "grant injunctions in accordance with the principles of equity . . . ," but § 283 must be read in conjunction with the rest of the patent laws. And, as seen above, nothing in the patent law hinges the right to exclude on the patentee's own use or sale of the invention.

Indeed, because patent rights are founded on invention, not on a promise of commercialization, consideration of the patentee's use has no place in the decision to grant an injunction. As one commentator put it, "[t]o impose the burden of exploitation on the inventor seems to make the

patent dependent upon its exploitation, rather than upon the making of the invention. What then, one may ask, is the patent rewarding: the invention or its exploitation?" Nuno Pires de Carvalho, *The Primary Function of Patents*, 2001 U. Ill. J.L. Tech. & Pol'y 25, 34 (2001).

This Court and others have consistently answered the above question by holding that patents reward invention, not use. Thus, patent law does not require patent owners to commercialize the invention. The patentee owes no particular duty to the public to make, use, or sell the invention himself. *See Hartford-Empire*, 323 U.S. at 432 ("A patent owner is not in the position of a quasi-trustee for the public or under any obligation to see that the public acquires the free right to use the invention. He has no obligation either to use it or to grant its use to others."); *see, e.g., American Brake Shoe & Foundry Co. v. Hoadley Brake Shoe Co.*, 222 F. 327, 330 (D. Mass. 1915) ("[A] patentee, or his successor, does not lose his right to protection under a patent, even if he does not continue manufacturing under the patent, unless an intention is shown to abandon his invention."), *aff'd*, 227 F. 90 (1st Cir. 1915).

Put another way, patent law does not distinguish among or discriminate against classes of patent owners. A patent owner is thus free to make and sell the patented invention, to license the patented invention to others to commercialize, or to refuse to do so altogether. The patent owner may license some companies and refuse to license others. The refusal or inability of a patent owner to use or commercialize the patented invention does not give the public free reign to infringe the patent. *See, e.g., Dawson Chem. Co. v. Rohm and Haas Co.*, 448 U.S. 176, 215 (1980) (holding that the right to exclude is "the essence of a patent grant" and a patentee is thus not required to license the patent to others); *see also SCM Corp. v. Xerox Corp.*, 645 F.2d 1195, 1204 (2d Cir. 1981) (holding that patentee's unilateral refusal to

license its patents to competitors was within its statutory right to exclude and was otherwise lawful), *cert. denied*, 455 U.S. 1016 (1982); *Extratol Process, Ltd. v. Hiram Walker & Sons, Inc.*, 153 F.2d 264, 268 (7th Cir. 1946) ("The patentee is the sole judge of the licensee he shall select, to make, to sell, or to use his patented article. Patentee's reasons for selection of its licensee are of no concern to others.").

IV. COMPULSORY LICENSING SHOULD PLAY NO ROLE IN THIS CASE

Courts routinely assess damages for patent infringement. But the remedy of damages does not address continuing infringement after the judgment. An injunction does. The alternative to an injunction for enforcing patent rights against continuing infringement is compulsory licensing. But that alternative is not satisfactory. Indeed, compulsory licensing has been repeatedly rejected by Congress.[3]

Several decades ago, before establishment of the Federal Circuit, the Second Circuit denied inventor Julius E. Foster an injunction against continuing infringement simply because he did not use or sell the invention in competition with the infringer. Foster had conceived a "radically new idea in alternating current welding," which was "a revolutionary concept" that "solved" a "longstanding welding problem." *Foster v. Magnetic Heating Corp.*, 297 F. Supp. 512, 514 (S.D.N.Y. 1968). Nevertheless, the court allowed infringement to continue under compulsory licensing at a royalty fixed by the court. The Second Circuit approved the compulsory license, acknowledging that, "[t]o grant [Foster] a compulsory royalty is to give him half a

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[3] A compulsory license forever denies an inventor the opportunity to negotiate an exclusive license with the inventor's preferred licensee. The compulsory license destroys the exclusive right.

loaf." *Foster v. American Mach. & Foundry Co.*, 492 F.2d 1317, 1324 (2d Cir. 1974).

The adjudged infringers in this case have relied on the Second Circuit's opinion in *Foster* for the proposition that an injunction should be denied to non-using patent owners. But this Court and Congress have flatly rejected the Second Circuit's inadequate remedy. In keeping with the Congressional rejection of compulsory licensing, this Court has refused to insert compulsory licensing into United States patent law jurisprudence. "Compulsory licensing is a rarity in our patent system, and we decline to manufacture such a requirement." *Dawson Chem. Co. v. Rohm and Haas Co.*, 448 U.S. 176, 215 (1980).

Congress has been consistent in its rejection of compulsory licensing. "Compulsory licensing of patents often has been proposed, but it has never been enacted on a broad scale. Although compulsory licensing provisions were considered for possible incorporation into the 1952 revision of the patent laws, they were dropped before the final bill was circulated." *Dawson Chem.*, 448 U.S. at n. 21 (internal citations omitted). The refusal to adopt a system of compulsory licensing dates far back in history. "Congress was asked as early as 1877, and frequently since, to adopt a system of compulsory licensing of patents. It has failed to enact these proposals into law." *Hartford-Empire Co. v. United States*, 323 U.S. 386, 417 (1945).

Moreover, the court Congressionally charged with the mandate of shaping American patent law, the Court of Appeals for the Federal Circuit, has rejected the *Foster* court's reasoning. Specifically, the Federal Circuit explained that limiting the right to an injunction contravenes the Constitutional purpose behind patents and destroys the patent's value:

> Without the injunctive power of the courts, the right to exclude granted by the patent would be diminished, and the express purpose of the Constitution and Congress, to promote the useful arts, would be seriously undermined. The patent owner would lack much of the "leverage," afforded by the right to exclude, to enjoy the full value of his invention in the market place. Without the right to obtain an injunction, the right to exclude granted to the patentee would have only a fraction of the value it was intended to have, and would no longer be as great an incentive to engage in the toils of scientific and technological research.

Smith Int'l, Inc. v. Hughes Tool Co., 718 F.2d 1573, 1577–78 (Fed. Cir.), *cert. denied*, 464 U.S. 996 (1983).

The Second Circuit's unauthorized experiment with compulsory licensing should be firmly repudiated. Independent inventors who have given of their time, talent, ingenuity, education, and experience to conceive and describe a new and non-obvious invention in a patent should not be discriminated against. Their collective contributions to American innovation are huge. This fertile source of innovation should not be reduced to receiving "half a loaf."

Without an injunction, MercExchange, Julius Foster, and other like patent owners could never be made whole. "It hardly needs to be pointed out that the right [of the patentee] can only retain its attribute of exclusiveness by a prevention of its violation." *Cont'l Paper Bag Co.*, 210 U.S. at 430. Money damages partly compensate patent owners, of course, but only injunctions against continuing infringement can fully remedy the violation. *See, e.g., Polymer Techs., Inc. v. Bridwell*, 103 F.3d 970, 976 (Fed. Cir. 1996) ("[B]ecause the principal value of a patent is its statutory right to exclude, the nature of the patent grant weighs against holding that

monetary damages will always suffice to make the patentee whole.").

V. THE LEVERAGE OF A PATENT INJUNCTION IS STRICTLY TEMPERED SO AS TO ONLY EXPOSE BAD ACTORS TO CONTEMPT

Independent inventors can not be so severely ill-served by the courts that infringing activity is permitted to continue in the guise of mere colorable changes to adjudged infringements. Mr. Justice Cardozo once observed that litigation is a rare and catastrophic experience for the vast majority of men. *Int'l Union of Operating Eng'rs, Local 150, AFL-CIO v. Flair Builders, Inc.*, 406 U.S. 487, 497 (1972) (Powell dissenting) *citing* Benjamin Cardozo, *The Nature of the Judicial Process* 128 (1921). The import of eBay's request for denial of an injunction is to force MercExchange to start all over again after having endured over $9 million in litigation costs to successfully prove eBay was willfully infringing its patent. JA 970–81.

Our judicial system demands finality. Litigants should not be forced into perpetually litigating matters that have been decided. Patent injunctions — no matter how worded — only impose contempt on the adjudicated infringement and colorable changes therefrom. After having had the court construe the claims of the patent, the infringer is well positioned to make a meaningful design around that avoids the claims as construed. The inventor, who has fulfilled the bargain with the government of disclosing a novel and non-obvious invention, is entitled to exclude practice of the infringement, especially after fully litigating the matter. The innovative activities of independent inventors would be threatened if it were perceived that even such a narrow remedy is denied to them.

Contrary to eBay's arguments, an injunction or threat of contempt does not provide undue leverage over an adjudged

infringer who, after judgment, acts in good faith. The law of injunctions and contempt properly limit the leverage of contempt to the adjudged infringement and mere colorable changes. See *KSM Fastening Sys., Inc. v. H.A. Jones Co., Inc.*, 776 F.2d 1522, 1530 (Fed. Cir. 1985) ("[P]roceedings by way of contempt should not go forward if there is more than a 'colorable difference' in the accused and adjudged devices."). Only if eBay makes no more than a mere colorable change to its system would it face contempt. To the extent eBay makes a good faith effort to design around the patent, contempt will not be available to MercExchange. Thus, even when enjoined, eBay avoids contempt merely by showing that the new system includes more than a mere colorable change to the infringing system, that is, it raises substantial open issues with respect to infringement. *KSM Fastening Sys. Inc.*, 776 F.2d at 1532.

Courts uniformly exercise restraint in affording a patent owner the benefit of contempt proceedings. *KSM Fastening Sys., Inc.*, 776 F.2d at 1525. Federal Rule of Civil Procedure 65(d) protects the infringer from an overreaching injunction. "The rule requires an injunction to prohibit only those acts sought to be restrained, which in this case are infringement of the patent by the devices adjudged to infringe and infringement by devices no more than colorably different therefrom." *Int'l Rectifier Corp. v. IXYS Corp.*, 383 F.3d 1312 (Fed. Cir. 2004).

Even if a patent injunction were overbroad, infringers who design around a patent are protected from the severity of contempt hearings. "The unreasonableness of a decree incorporating a vague or broad prohibition against 'infringement' of a 'patent' is alleviated because of the universal rule . . . that contempt proceedings, civil or criminal, are available only with respect to devices previously admitted or adjudged to infringe, and to other devices which are no more than colorably different

therefrom and which clearly are infringements of the patent." *KSM Fastening Sys., Inc.*, 776 F. 2d at 1526. For a legitimate design around system that has more than a colorable variation from the adjudicated infringing system, infringement will always need to be resolved through a separate infringement action. *Additive Controls & Measurement Sys., Inc. v. Flowdata, Inc.*, 154 F. 3d 1345, 1350 (Fed. Cir. 1998).

CONCLUSION

For the foregoing reasons, the judgment of the court of appeals should be affirmed and this Court should reaffirm that non-practice of an invention is irrelevant to patent owner's right to an injunction.

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March 10, 2006